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HOUSE BILL 1019

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Al Park

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING PROCEDURES FOR ENFORCING  
CERTAIN WARRANTIES PURSUANT TO THE MOTOR VEHICLE QUALITY  
ASSURANCE ACT; PROVIDING REMEDIES FOR VIOLATING THAT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 57-16A-1 NMSA 1978 (being Laws 1985,  
Chapter 220, Section 1) is amended to read:

"57-16A-1. SHORT TITLE.--~~[This act]~~ Chapter 57, Article  
16A NMSA 1978 may be cited as the "Motor Vehicle Quality  
Assurance Act"."

Section 2. Section 57-16A-3.1 NMSA 1978 (being Laws 2003,  
Chapter 216, Section 3) is amended to read:

"57-16A-3.1. USED MOTOR VEHICLES.--

A. Unless a seller is a used motor vehicle dealer,  
before the seller attempts to sell a used motor vehicle, the

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1 seller shall possess the title to the used motor vehicle and  
2 the title shall be in the seller's name.

3 B. Except as otherwise provided in the Motor  
4 Vehicle Quality Assurance Act, a used motor vehicle dealer  
5 shall not exclude, modify or disclaim the implied warranty of  
6 merchantability prescribed in Section 55-2-314 NMSA 1978 or  
7 limit the remedies for a breach of the warranty before midnight  
8 of the fifteenth calendar day after delivery of a used motor  
9 vehicle or until a used motor vehicle is driven five hundred  
10 miles after delivery, whichever is earlier. In calculating  
11 time under this subsection, a day on which the warranty is  
12 breached and all subsequent days in which the used motor  
13 vehicle fails to conform with the implied warranty of  
14 merchantability are excluded. In calculating distance under  
15 this subsection, the miles driven to obtain or in connection  
16 with the repair, servicing or testing of the used motor vehicle  
17 that fails to conform with the implied warranty of  
18 merchantability are excluded. An attempt to exclude, modify or  
19 disclaim the implied warranty of merchantability or to limit  
20 the remedies for a breach of the warranty in violation of this  
21 subsection renders a purchase agreement voidable at the option  
22 of the purchaser.

23 C. An implied warranty of merchantability is met if  
24 a used motor vehicle functions substantially free of a defect  
25 that significantly limits the use of the used motor vehicle for

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1 the ordinary purpose of transportation on any public highway.  
2 The implied warranty of merchantability expires at midnight of  
3 the fifteenth calendar day after delivery of a used motor  
4 vehicle or until a used motor vehicle is driven five hundred  
5 miles after delivery, whichever is earlier. In calculating  
6 time, a day on which the implied warranty of merchantability is  
7 breached is excluded, and all subsequent days in which the used  
8 motor vehicle fails to conform with the warranty are also  
9 excluded. In calculating distance, the miles driven to obtain  
10 or in connection with the repair, servicing or testing of the  
11 used motor vehicle that fails to conform with the implied  
12 warranty of merchantability are excluded.

13 D. An implied warranty of merchantability does not  
14 extend to damage that occurs after the sale of the used motor  
15 vehicle that results from:

- 16 (1) off-road use;
- 17 (2) racing;
- 18 (3) towing;
- 19 (4) abuse;
- 20 (5) misuse;
- 21 (6) neglect;
- 22 (7) failure to perform regular maintenance;

23 and

24 (8) failure to maintain adequate oil, coolant  
25 and other required fluids or lubricants.

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1           E. If the implied warranty of merchantability  
2 described in this section is breached, the consumer shall give  
3 reasonable notice to the seller within [~~thirty~~] fifteen days of  
4 the date of the breach. Before the consumer exercises another  
5 remedy pursuant to Chapter 55, Article 2 NMSA 1978, within  
6 thirty days of the breach, the consumer shall return the used  
7 motor vehicle to the seller for repairs and the seller shall  
8 have a reasonable opportunity to repair the used motor vehicle.  
9 The consumer shall pay one-half of the cost of the first two  
10 repairs necessary to bring the used motor vehicle into  
11 compliance with the warranty. The payments by the consumer are  
12 limited to a maximum payment of twenty-five dollars (\$25.00)  
13 for each repair.

14           F. The maximum liability of a seller pursuant to  
15 this section is limited to the purchase price paid for the used  
16 motor vehicle, to be refunded to the consumer or lender, as  
17 applicable, in exchange for return of the vehicle, unless the  
18 seller knew or should have known of the defect given the  
19 circumstances in which the vehicle was acquired or sold and the  
20 seller did not disclose that defect.

21           G. An agreement for the sale of a used motor  
22 vehicle by a used motor vehicle dealer is voidable at the  
23 option of the consumer unless it contains on its face the  
24 following conspicuous statement printed in boldface, ten-point  
25 or larger type set off from the body of the agreement:

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1 "New Mexico law requires that this vehicle will be  
2 fit for the ordinary purposes for which the vehicle  
3 is used for fifteen days or five hundred miles after  
4 delivery, whichever is earlier, except with regard  
5 to particular defects disclosed on the first page of  
6 this agreement. You (the consumer) will have to pay  
7 up to twenty-five dollars (\$25.00) for each of the  
8 first two repairs if the warranty is violated."

9 H. The inclusion in the agreement of the statement  
10 prescribed in Subsection G of this section does not create an  
11 express warranty.

12 I. A consumer of a used motor vehicle may waive the  
13 implied warranty of merchantability only for a particular  
14 defect in the vehicle and only if all of the following  
15 conditions are satisfied:

16 (1) the used motor vehicle dealer fully and  
17 accurately discloses to the consumer that because of  
18 circumstances unusual to the business of the used motor vehicle  
19 dealer, the used motor vehicle has a particular defect;

20 (2) the consumer agrees to buy the used motor  
21 vehicle after disclosure of the defect; and

22 (3) before the sale, the consumer indicates  
23 agreement to the waiver by signing and dating the following  
24 conspicuous statement that is printed on the first page of the  
25 sales agreement in boldface ten-point or larger type and that

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1 is written in the language in which the presentation was made:

2 "Attention consumer: sign here only if the dealer  
3 has told you that this vehicle has the following  
4 problem(s) and you agree to buy the vehicle on those  
5 terms:

- 6 1. \_\_\_\_\_
- 7 2. \_\_\_\_\_
- 8 3. \_\_\_\_\_."

9 J. A used motor vehicle dealer has the burden to  
10 prove by a preponderance of the evidence that the dealer  
11 complied with Subsection I of this section.

12 K. A consumer or seller that is aggrieved by a  
13 transaction pursuant to this section and that seeks a legal  
14 remedy shall pursue an appropriate remedy prescribed in Chapter  
15 55, Article 2 NMSA 1978 and shall comply with the requirements  
16 prescribed in that article."

17 Section 3. A new section of the Motor Vehicle Quality  
18 Assurance Act is enacted to read:

19 "[NEW MATERIAL] USED MOTOR VEHICLE PROVISIONS--REMEDIES.--

20 In addition to all other remedies available, if a seller  
21 attempts to or does exclude, modify or disclaim the implied  
22 warranty of merchantability or attempts to or does limit the  
23 remedies for a breach of the used motor vehicle warranty in  
24 violation of the Motor Vehicle Quality Assurance Act, the  
25 purchaser may recover from the seller additional statutory

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damages of one thousand dollars (\$1,000)."

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